

Phil Montgomery

Serving the Communities of Allouez, Ashwaubenon, De Pere and Green Bay

**WITHHOLDING UTILITY SECURITY SYSTEM PLANS
FROM PUBLIC INSPECTION
ASSEMBLY BILL 728
ASSEMBLY COMMITTEE ON HOMELAND SECURITY
AND STATE PREPAREDNESS
FEBRUARY 5, 2008**

Thank you Chair Ballweg and members of the Assembly Committee on Homeland Security and State Preparedness for holding a hearing on Assembly Bill 728 today. This bill would include a utility security plan in the list of items withheld by state or local governments from public inspection.

A security system plan as defined under the bill is a plan for the physical or electronic security of facilities, telecommunications systems or information technology systems. These plans include threat assessments, vulnerabilities, threat response plans or emergency evacuation plans.

Currently, the list of items excluded from public access includes:

- Many law enforcement records and law enforcement informant information
- Some computer programs
- Trade secrets
- Certain candidates for public positions that indicate they do not want their identities revealed
- State building plans and specifications
- Employee personnel records and financial identifying data

If individual identities, computer program data, and trade secrets are worthy of being withheld from public access, it would seem common sense to include utility security plans. These utilities provide services to millions of residents in Wisconsin that depend on them in everyday life. If these utilities were penetrated by individuals or groups that have ill intentions for the state of Wisconsin, the negative impact on the public health and welfare of our state could be massive and long-lasting.

Our state dependence on the ever growing telecommunications and information technology industries make it vital to protect these systems from attack. If these utilities were attacked, the economy would be damaged and along with it the health of our state.

Currently, much of utility security system plan information is protected by federal law and the access to security system plans is blocked by state government if the public interest in not disclosing the information outweighs the public interest in disclosure. However, these vital systems are too important to allow them to become vulnerable because of ever changing federal laws or if mistakenly, the disclosure of critical information was released by a unit of government.

Thank you all again for hearing Assembly Bill 728 and at this time I would be happy to answer any questions you may have. If I cannot answer your questions at this time, I would be happy to find the answers and get back to you with them as soon as possible.



PETER D. FOX
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February 5, 2008

State Representative Joan Ballweg
Chair, Assembly Committee on Homeland Security & State Preparedness
Room 115 West, State Capitol
PO Box 8952
Madison, WI 53708

Dear Representative Ballweg and Members of the Committee:

On behalf of the Board of Directors of the Wisconsin Newspaper Association (WNA) and its 241 daily and weekly member newspapers, we appreciate the opportunity to express our concerns regarding 2008 Assembly Bill 728. For multiple reasons, we strongly oppose this bill as we did its previous iteration as 2003 Senate Bill 8.

As in early 2003, we wish to emphatically state that this proposal is entirely unnecessary from the standpoint of protecting public safety. The law is well settled that public-record requests may be denied when there may be harm to the public interest:

"[T]he right to inspect public documents and records at common law is not absolute. There may be situations where the harm done to the public interest may outweigh the right to a member of the public to have access to public records or documents." (*State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 681, 137 N.W.2d, 470, 474 (1965)).

Since 1965 Wisconsin has fared well adhering to a "balancing test" that must be conducted on a case-by-case basis in a proper venue:

"The duty of first determining that the harmful effect upon the public interest of permitting inspection outweighs the benefit to be gained by granting inspection rests up the public office having custody of the record or document sought to be inspected. If he determines that permitting that inspection would result in harm to the public interest which outweighs any benefit that would result from granting inspection, it is incumbent upon him to refuse the demand for inspection and state specifically the reasons for this refusal[P]ublic policy favors the right of inspection of public records and documents, and it is only in exceptional case that inspection should be denied." 28 Wis. 2d 672, 682-683, 137 N.W.2d, 470, 475.

On a second point, this bill is sweepingly broad, extending to any custodian **total discretion** over any record containing undefined "security measures" in an extensive range of situations. The public can trust these "authorities" to manage their utility and their science – but to determine security classifications and make decisions on "vital" matters of state and therefore national security? Highly doubtful.

- If this bill had been in effect previously, can we be confident that the cost overrun and operational issues of Milwaukee Metropolitan Sewerage District and its "deep tunnel" project would have been disclosed to the public?
- What about the problems with Madison's contaminated wells and sections of antiquated infrastructure? Would the manager who was eventually dismissed have fought harder to keep his job, and could he have used this law to block disclosure of important information?
- As transmission infrastructure falls under this bill, would issues of stray voltage that concern farmers be open for discussion? Or what about public discussion of routes for natural gas pipelines or high-voltage electrical transmission lines?
- The definition of "security system plan" is wildly sweeping. As it is, can that definition overlap to the "upstream" supplier of a municipal utility such as a large power cooperative or a privately owned nuclear power plant?

This list of examples could go on and on. As we have seen many times and in many places, a claim of "security risk" has been made to hide many a misdeed. To repeat: Wisconsin has a clear, precise method of reviewing a public document when a public official has a legitimate concern that its release is injurious to public welfare. What review of a local utility manager's decision to "classify" is described in AB 728? What are the standards, the benchmarks for the utility manager to make such a far-reaching decision? And furthermore, if the decision to withhold or release virtually every other public document is subject to some sort of review – where is the review for this type of decision? The answer to all these questions is: "There is none."

Is it not known that existing Wisconsin laws and administrative rules already act as safeguards over operation of important public utilities? That there are such things as "vulnerability assessments" and emergency response plans for municipal water supplies that are mandated by the U.S. Environmental Protection Agency and the Wisconsin Department of Natural Resources? And, incidentally, that planning such as this was underway years before September 11? And certainly it is known to the Legislature that the Wisconsin Emergency Management and the Department of Military Affairs have been involved in evaluating vulnerabilities of both public and private utilities for years.

So, where is the need? What is the justification? And what is the urgency behind this proposal? It has been five years to the month that this proposal came forward as SB 8. It passed both the Assembly and Senate but an override of a gubernatorial veto

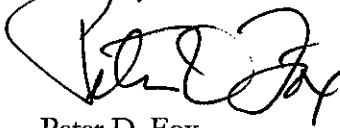
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Chair, Assembly Committee on Homeland Security & State Preparedness
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subsequently failed. What has changed? What are the compelling reasons compiled over the past five years that make the case to citizens for reconsideration? Hasn't the interim of five years been long enough for advocates of AB 728 to substantiate their argument?

Frankly, we can't even make the argument that this bill would result in "feel good" legislation. If enacted, this bill would plant the seeds of doubt among the public which would have real reason to wonder what about the operation of their public utilities is fact – and what is at best, conjecture, and at worst, fiction.

We strongly urge this committee to reject AB 728.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Fox", written over a large, stylized, handwritten "X" or similar mark.

Peter D. Fox
Executive Director